

Appl. No. 10/799,938
Docket No. 8129/Z-3353
Amdt. dated June 30, 2011
Reply to Office Action mailed on March 16, 2011
Customer No. 27752

REMARKS

Claim Status

Claims 1-18 and 38-50 are pending in the present application. No additional claims fee is believed to be due.

Claims 19-37, 51, and 52 have been canceled without prejudice.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §103(a) Over Simms in view of Richard

Claims 1-8, 38-45, and 50 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Simms (US 2002/0023351) in view of Richard (US 7,200,937). This rejection is traversed because the combination of Simms in view of Richard does not establish a *prima facie* case of obviousness because it does not teach or suggest all of the claim limitations of independent claims 1 or 38.

With regard to the §103 rejections, under MPEP 2142 the Examiner bears the burden of factually supporting any *prima facie* conclusion of obviousness. In determining the differences between the cited art and the claims, the question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. See *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983). Moreover, the cited references must teach or suggest all the claim limitations. See, for example, *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). If the Examiner does not prove a *prima facie* case of unpatentability, then without more, the Applicant is entitled to the grant of the patent. See *in re Oetiker*, 977 F.2d 1443. Applicants respectfully assert that the Office Action fails to meet all of these criteria, and thus fails to make a *prima facie* case of obviousness under 35 USC §103.

The Office Action states "Simms further generally teaches a ratio between the front and rear portion appears to be within 45 percent of the length of the rear portion (see Figure 3)." "[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." *Hockerson-Halbertstadt, Inc. v. Avia*

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Group Int'l Inc., 222 F.3d 951, 956 (Fed. Cir. 2000) (holding that the drawings could not be relied upon to construe whether the term "central longitudinal groove" required that the width of the groove be less than the combined width of the fins). "Ordinarily drawings which accompany an application for a patent are merely illustrative of the principles embodied in the alleged invention claimed therein and do not define the precise proportions of elements relied upon to endow the claims with patentability." *In re Olson*, 212 F.2d 590, 592 (CCPA 1954). Accordingly, it is unreasonable to assert that "Simms further generally teaches a ratio between the front and rear portion appears to be within 45 percent of the length of the rear portion" when there is no additional support beyond the Figures.

The rejections of the claims affirmed by the board all involve a modification of Simms where the pivot axis is moved based on the disclosure of Richard. The movement of the pivot axis in Simms to the placement disclosed by Richard would result in at least one blade being in front of the pivot axis. Richard is concerned with having "a plurality of blades which are linked for coordinated movement along non-parallel paths in response to forces encountered during shaving" (Richard, col. 2, lines 46-48). While Richard does disclose that "[p]referably the pivoting axis is within 0.010 inches of the center of the cap and the guard, Richard also discloses that "[t]he pivoting axis is most preferably located on a shave plane defined by a plane passing through at least two of the blade edges and at a mid point between the cap and the guard element when the blade package is in a neutral, i.e., unbiased, position" (Richard, col. 4, lines 3-10).

Turning to the rejections over Simms in view of Richard, it is submitted that several key limitations that together characterize the present invention are not disclosed therein, i.e., the elastomeric member extends in front of the pivot axis by "a front distance that is equal to or not more than 45 percent less than a rear distance along the housing axis from the pivot axis to the rear surface" and the pivot axis is located in front of the blades." To make up for the deficiencies of Simms, the previous Office Actions relied on the teachings of Richard. Contrary to amended Claims 1 and 38, Richard discloses that "[p]referably the pivoting axis is within 0.010 inches of the center of the cap and the guard". Richard also discloses that "[t]he pivoting axis is most preferably located on a

shave plane defined by a plane passing through at least two of the blade edges and at a mid-point between the cap and the guard element when the blade package is in a neutral, i.e., unbiased, position” (Richard, col. 4, lines 3-10). These disclosures indicate that the location of the pivot axis in Richard would be behind the first blade (toward the middle of the cartridge).

It is noted that the board did not consider the advantages or importance of *an elastomeric member extends in front of the pivot axis by a front distance that is equal to or not more than 45 percent less than a rear distance along the housing axis from the pivot axis to the rear surface*. The advantages of the specifically claimed pivot location is described in the specification of the present application at page 18, lines 18-29. For example, the present application discloses that “balancing the cartridge in this manner, rock back is minimized while still providing the safety benefits of a front pivoting arrangement. Safety is maintained because the additional pressure applied by the user will be relatively uniformly distributed between the blades and the elastomeric member rather than being transmitted primarily to the blades, as would be the case in a center pivoting arrangement (a blade unit having a pivot axis located between the blades).”

One skilled in the art having read Simms and Richard would not have moved the pivot axis to the claimed location. The combination of Simms and Richard would result in moving the pivot axis toward the center of the cartridge, not toward the front of the cartridge and in front of the blades. In addition, there is no teaching or suggestion in either reference that would lead one of ordinary skill in the art to extend the elastomeric member further in front of the pivot axis (e.g., 45% less than, a rear distance). Richard specifically teaches “proper balance of the shaving forces on each of the blades will be maintained.” (emphasis added, see column 3, line 67 to column 4, lines 1-3). Simms and Richard do not account for “rock back”. More specifically, Richard teaches a center pivot that transmits forces primarily to the blades, which the presently claimed invention purposely avoids. As mentioned above, the presently claimed invention results in forces that are “uniformly distributed between the blades and the elastomeric member” (emphasis added), not on each of the blades, as taught by Richard. Accordingly, one having ordinary skill in the art at the time of invention viewing both Simms and Richard

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would not find it obvious to move the pivot axis of the Simms device to the pivot axis location disclosed by Richard because doing so would undermine the direct teachings of Richard regarding the locations of the pivot axis.

Various dependent claims have been rejected as unpatentable over Simms combined with secondary references (claims 9, 12-15, 46 and 47 -- Simms in view of Apprille; claims 10 and 16 -- Simms in view of Andrews; claim 11 -- Simms in view of Gilder; and claims 17-18 and 48-49 -- Simms in view of Rozenkranc.) Applicants submit that these claims are patentable for at least the reason that they depend from a patentable base claim.

Applicants have not addressed each and every point made by the Examiner, as it is believed that some points, e.g., regarding secondary references, are moot in view of the above remarks. However, Applicant reserves the right to address any such points during further prosecution. All claims are believed to be in condition for allowance. Should the Examiner disagree, Applicant respectfully invites the Examiner to contact the undersigned agent to arrange a telephonic interview in an effort to expedite the prosecution of this matter.

Conclusion

This response represents an earnest effort to place the present application in allowable form. In view of the foregoing, entry of the amendment(s) presented herein, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested. In the event that there are any questions related to this Amendment, or to the application in general, the Examiner is respectfully urged to contact the undersigned attorney by telephone so that prosecution of the application may be expedited.

Respectfully submitted,

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